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8                   UNITED STATES DISTRICT COURT  
9                   WESTERN DISTRICT OF WASHINGTON  
10                  AT TACOMA

11 DENNIS FLOKER,

12                  Plaintiff,

13                  v.

14                  CHERYL JOHNSON, *et al.*

15                  Defendants.

16                  Case No. C06-5561 RJB/KLS

17                  ORDER DENYING PLAINTIFF'S  
18                  MOTION FOR PERSONAL  
19                  SERVICE OF DEFENDANTS

20                  Before the Court is Plaintiff's motion for personal service of Defendants. (Dkt. # 145). Having  
21                  carefully reviewed Plaintiff's motion, Defendants' opposition (Dkt. # 149) and the balance of the record,  
22                  the Court finds that Plaintiff's request should be denied.

23                  **I. DISCUSSION**

24                  Pursuant to Rule 4(m) of the Federal Rules of Civil Procedure, service of the summons and  
25                  complaint must be made upon a defendant within 120 days after the filing of the complaint. Unless the  
26                  plaintiff can show good cause for his failure to serve, the court shall dismiss the action without prejudice  
27                  as to that defendant or shall extend the time for service. Fed.R.Civ.P. 4(m). In cases involving a plaintiff  
28                  proceeding *in forma pauperis*, a United States Marshal, upon order of the court, shall serve the summons  
and complaint. Fed.R.Civ.P. 4(c)(2). “[A]n incarcerated pro se plaintiff proceeding in forma pauperis is  
entitled to rely on the U.S. Marshal for service of the summons and complaint and . . . should not be  
penalized by having his action dismissed for failure to effect service where the U.S. Marshal or the court

1 clerk has failed to perform his duties.”” *Walker v. Sumner*, 14 F.3d 1415, 1422 (9<sup>th</sup> Cir. 1994) (quoting  
 2 *Puett v. Blanford*, 912 F.2d 270, 275 (9t Cir. 1990)), abrogated on other grounds by *Sandin v. Connor*,  
 3 515 U.S. 472 (1995). “So long as the prisoner has furnished the information necessary to identify the  
 4 defendant, the marshal’s failure to effect service is ‘automatically good cause.’”” *Walker*, 14 F.3d at 1422  
 5 (quoting *Sellers v. United States*, 902 F.2d 598, 603 (7<sup>th</sup> Cir. 1990)). However, where a pro se plaintiff  
 6 fails to provide the Marshal with accurate and sufficient information to effect service of the summons and  
 7 complaint, the court’s sua sponte dismissal of the unserved defendant is appropriate. *Walker*, 14 F.3d at  
 8 1421-22.

9 On September 4, 2007, the Court directed service of Plaintiff’s First Amended Complaint. (Dkt. #  
 10 75). Since the Order directing service, five of the completed service forms have been returned to the  
 11 Court by the Marshal service as “unexecuted”. (Dkt. # 80, 85, 86, 88, and 121). Of the four returned  
 12 “unexecuted” three were returned because Plaintiff failed to provide the full name of the individual he  
 13 was attempting to serve. (Dkt. # 80, 85, 88, and 121). The fourth and fifth “unexecuted” service forms  
 14 were addressed to employees at Washington Corrections Center and Stafford Creek Corrections Center  
 15 who no longer work at those institutions. (Dkt. # 80 and 86).

16 On November 29, 2007, Defendants received from Plaintiff a discovery request entitled “Secretary  
 17 Clarke or Whom Holds the Secretary Position Discu. # 1 FRCP Rule 33 No. 1 - 10 FRCP Rule 34 No. 1 -  
 18 12.” (Dkt. # 149, Exh. 2). Plaintiff requested the identities of all Adult Correctional Cooks, along with  
 19 their work locations, all Food Managers, along with their work locations, and the individual designated to  
 20 receive service on behalf of Correctional Industries and First Choice Food Products. *Id.* On December  
 21 28, 2007, Defendant Clarke served Plaintiff with his responses and objections to this request. *Id.*, Exh. 2,  
 22 Attach. A. In those responses, Defendants provided Plaintiff with the names and work locations of all  
 23 Adult Correctional Cooks and Food Managers, and informed Plaintiff that Secretary Eldon Vail and  
 24 Correctional Industries Director Lyle Morse can accept service on behalf of Correctional Industries, and  
 25 that First Choice Foods is not an entity, but is a brand name of products distributed by Correctional  
 26 Industries. *Id.*

27 **II. CONCLUSION**

28 Despite Plaintiff’s *in forma pauperis* status, he must supply the information necessary to identify

1 the defendants to be served. *See Walker v. Sumner*, 14 F.3d at 1415. Neither the U.S. Marshal Service  
2 nor the Clerk of the Court may engage in investigatory efforts on behalf of parties to a lawsuit as this  
3 would improperly place the Court in the role of the Plaintiff's advocate. However, it appears that Plaintiff  
4 now has the information necessary to properly identify the Defendants and to provide that information to  
5 the U.S. Marshal to complete service of the named Defendants in this action.

6 Accordingly, it is **ORDERED** that Plaintiff's motion to personally serve (Dkt. # 145) is  
7 **DENIED**. Plaintiff is directed to provide the U.S. Marshal Service with the information necessary to  
8 complete service on the Defendants named in his First Amended Complaint.

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10 DATED this 12th day of March, 2008.

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16 Karen L. Strombom  
17 United States Magistrate Judge  
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